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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

AUSTRALIA*

19 October 1999]

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* The initial report of Australia is contained in document CAT/C/9/Add.8 and 11; for its consideration by the Committee, see documents CAT/C/SR.95 and 96, and the Official Records of the General Assembly, Forty-seventh Session, Supplement No. 44 (A/47/44), paras. 181-214.

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INTRODUCTION

A. Preparation and structure of report

1. Australia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") on 8 August 1989. Pursuant to article 27, the Convention came into force for Australia on 7 September 1989.

2. This is Australia's combined second and third reports to the Committee against Torture. It is submitted by Australia under article 19, paragraph 1, of the Convention. This Report updates Australia's first report under the Convention ("the first report") and highlights significant changes to law and practice which occurred between the first report of 1991 and 30 June 1997, unless otherwise indicated. Cross-references to Australia's first report are included throughout this report so that significant changes may be clearly identified.

3. Relevant cross-references to Australia's third and fourth Report under the International Covenant on Civil and Political Rights (ICCPR)[1] and Australia's first report under the Convention on the Rights of the Child (CRC)[2] are made at the end of each part of this report in order to draw this information to the attention of the Committee while avoiding duplication of this information.

B. The Australian federal system

4. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the federal Government and those of the six states – New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania – and two internal self-governing territories, the Australian Capital Territory and the Northern Territory. For the purposes of this report, the two internal self-governing territories may be regarded as standing substantially in the same position as the states. In each of these political units there is a parliament elected by the people, an executive, formed by the majority party or parties in parliament and which is responsible to the parliament, and an independent judiciary. The federal constitutional system was described in some detail in Australia's first report, under the heading General Political Structure. We also refer the Committee to Australia's core document for a more detailed description of the operation of Australia's federal constitutional system and, in particular, to the sections headed. The law in Australia – nature and composition and Implementation of human rights treaties.[3]

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[1] Australia's third periodic report (CCPR/C/AUS/98/3) (March 1987 - December 1995) and fourth periodic report (CCPR/C/AUS/98/4) (January 1996 - December 1995).

[2] Australia's first report under the Convention (CRC/C/8/Add.31) (1996).

[3] *HRI/CORE/1/Add.44* (19 April 1994).

I. IMPLEMENTATION AND ADOPTION OF THE CONVENTION – ARTICLE 1 AND ARTICLE 2, PARAGRAPH 1

A. Article 1 - Definition of "torture and other cruel, inhuman or degrading treatment or punishment"

5. Australia relies on the detailed Convention definition of torture when interpreting the Convention for domestic purposes.

6. Australia notes that the Convention does not define "cruel, inhuman or degrading treatment or punishment". However, Australia understands that the acts or conduct encompassed by this expression entail some lesser degree of severity than those defined as "torture", which nevertheless are inconsistent with the inherent dignity and rights of the person. Australia understands that the expression encompasses such acts as excessive punishments out of proportion to the crime committed, or treatment which grossly humiliates and debases a person. However, Australian domestic law is not constructed around these terms and therefore does not distinguish between the two types of conduct as such. Accordingly, in this report, unless otherwise indicated, measures which address "torture" also address "other cruel, inhuman or degrading treatment or punishment".

B. Legal status and implementation of the Convention in Australia

7. Treaties are not self-executing in Australia. A treaty *per se* does not form part of Australian law unless it is incorporated by legislation (be it at federal, state or territory level) and, in the absence of such legislation, it cannot create rights in, or impose substantive obligations on, Australian citizens and residents. However, treaties can be relevant to the interpretation of statutes and are a source for the development of the common law. Also, the High Court of Australia has held that they can give rise to a procedural right to be heard in relation to the making of certain administrative decisions.[4] The act of Australia becoming a party to the Convention did not have the effect of changing or overriding any federal, state or territory laws or institutions. Thus, a person cannot go to an Australian court and simply claim that his or her rights under the Convention have been violated. In the absence of specific legislation which has incorporated those rights into federal, state or territory law, a person has no cause of action.

8. However, with one exception relating to the extension of Australian jurisdiction overseas, it was not necessary to enact new legislation to give effect to Australia's obligations under the Convention. This is because it was clear from consultations between state and federal governments that Australian laws already were consistent with the obligations under the Convention. In order to extend Australia's jurisdiction to persons suspected of having committed acts of torture outside Australia as required by Australia of the Convention enacted the *Crimes (Torture) Act 1988*.

9. Torture and other cruel, inhuman or degrading treatment or punishment is not tolerated in Australia. Such acts are a criminal offence and/or civil wrong in all Australian jurisdictions (see appendix two). If such acts are performed by public officials additional disciplinary penalties may apply (see appendix three).

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[4] *Minister of State for Immigration & Ethnic Affairs v Teoh* (1995) 183 CLR 273.

C. Mechanisms for scrutiny of actions taken by public officials

10. In Australia, apart from being subject to the general law, public officials are subjected to a high level of public scrutiny. The general mechanisms of public scrutiny are described in Australia's core document under the heading Existing institutional processes. These mechanisms can be divided into "standing mechanisms" by which routine reviews of predetermined issues are conducted, and 'extraordinary mechanisms' which are established to inquire into a specific issue of public concern.

1. Standing scrutiny mechanisms

11. A parliamentary committee is an example of a standing scrutiny mechanism. In each jurisdiction in Australia, parliaments have established a number of standing parliamentary committees which inquire into specific areas of special interest or public concern. The purpose of parliamentary committees is to perform functions which a parliament as a whole is not suited to perform, such as carrying out investigations, hearing witnesses, sifting evidence, discussing matters in detail and formulating findings and recommendations. Through its committees, parliaments are able to obtain information from governments, to receive advice from experts and to seek public comment on matters under investigation. The committees produce reports setting out their findings and recommendations which are then tabled in the relevant parliament.

12. Specialist statutory authorities, such as the Human Rights and Equal Opportunity Commission (HREOC) and the Federal Ombudsman, consider matters relevant to the conduct of public officials. HREOC has the legislative power to conduct inquiries into any act or practice that may be inconsistent with, or contrary to, any human right as defined under section 3 of the federal *Human Rights and Equal Opportunity Commission Act 1986,* including:

- The rights under the International Covenant on Civil and Political Rights;
- The rights of the mentally retarded;
- The rights of children;
- The right to religious freedom; and
- The rights of disabled persons.

2. Extraordinary scrutiny mechanisms

13. A Royal Commission is an example of an extraordinary scrutiny mechanism which may inquire into major issues of public concern. In each jurisdiction in Australia, legislation provides that a state governor, territory administrator or the Governor-General (as the case may be) may issue a Royal Commission of Inquiry on the recommendation of the Government. A Royal Commission has the legislative power to: summons witnesses; call evidence; issue search warrants; receive sworn evidence; and communicate information it has received to the relevant authority for prosecution under the law. A Royal Commission produces a public document at the end of its term. A number of Royal Commissions have been instigated by governments throughout Australia to monitor specific situations where violations of the rights of individuals or groups of individuals subject to Australia's jurisdiction may have occurred.

D. A sample of inquiries conducted by standing and extraordinary mechanisms of public scrutiny

14. In the reporting period, a number of inquiries were established into matters which raised issues relevant to the conduct of public officials. These included:

- *Asylum, Border Control and Detention,* Federal Parliamentary Inquiry by the Joint Standing Committee on Migration, February 1994 (see annex 1);

- *Human Rights and Mental Illness. Report of the National Inquiry into the Human Rights of People with Mental Illness*, HREOC, September 1993 (see annex 2);

- *Royal Commission into Aboriginal Deaths in Custody. National Report*, Commissioner Elliott Johnston, Canberra, 1991 (see annex 3);

- *Royal Commission into the New South Wales Police Service Final Report,* Commissioner The Hon. Justice JRT Wood, May 1997 (see annex 4);

- *Integrity: but not by trust alone. Inquiry into Australian Federal Police and National Crime Authority Complaints and Disciplinary Systems,* Report No. 82 Australian Law Reform Commission (ALRC), 1996 (see annex 5);

- *The National Inquiry into Children and the Legal Process,* by the ALRC and the HREOC;

- *The Inquiry into the Detention of Unauthorised Arrivals in Australia* by the HREOC.[5]

15. The recommendations of such inquiries are carefully considered by federal, state and territory governments. Copies of the reports issued in the reporting period and, where available, the relevant government's response will be made available for the information of Committee members. For the information of the Committee, a brief summary of the key issues and recommendations contained in some of these reports is set out below. The inclusion of these summaries for the information of the Committee should not be taken to suggest that all matters canvassed in the reports are relevant for the purposes of the Convention.

1. Federal Parliamentary Inquiry into Asylum, Border Control and Detention

16. A significant examination and revision of Australia's immigration detention policy was undertaken by the Parliamentary Joint Standing Committee on Migration which published its report, *Asylum, Border Control and Detention*, in February 1994. This Committee was supportive of Australia's immigration control system and recommended that those arriving without, or with insufficient, documentation should be detained upon arrival.

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[5] Inquiries which had not concluded by the end of the reporting period, or reports which were released after the reporting period, will be included in Australia's next report to the Committee if relevant to Australia's compliance with the Convention. Included in this latter category are the reports from *The National Inquiry into Children and the Legal Process,* by the ALRC and the HREOC (*Seen and Heard - Priority for Children in the Legal Process,* Report No. 84, 1997) and the *Inquiry into the Detention of Unauthorised Arrivals in Australia* by the HREOC (*Those who've come across the seas,* 1998).

17. However, the Committee did recommend that a mechanism for the release of asylum seekers from detention in the form of a bridging visa be implemented. The Committee recommended that such bridging visas be made available to "persons who are particularly vulnerable to any effects of long term detention, namely those persons with a special need based on age, health, or previous experiences of torture or trauma" (recommendations 11 and 12).

18. In response to these recommendations, Bridging Visa E (051) was introduced. The conditions under which it can be granted to an immigration detainee are set out in sub-regulation 2.20(9) of the Migration Regulations.[6] This mechanism is intended for use in exceptional circumstances only when an unlawful non-citizen in detention has a special need arising from his or her health or previous experience of torture or trauma.

19. The Committee also examined the idea of community release of detainees but questioned the ability of care and welfare groups adequately to support released detainees in the absence of government assistance and oversighting. The notion that the costs associated with release would be cheaper than the costs associated with running detention facilities was rejected after taking into account both direct and indirect costs such as accommodation, clothing and food as well as living, medical and health costs. Further, the Committee was concerned that the chance of persons breaching conditions of release and absconding was significant.

20. The findings and recommendations of the Committee, particularly its support for Australia's detention policy, remain the subject of debate within Australia.

2. National Inquiry into the Human Rights of People with Mental Illness

21. In June 1990, HREOC announced its intention to undertake a National Inquiry into the Human Rights of People with Mental Illness. The National Inquiry held public forums, public hearings, informal consultations and private hearings, and received approximately 900 written submissions from individuals, organizations and government authorities. The final report of the National Inquiry was tabled on 18 October 1993.

22. The National Inquiry examined the provision of public and private mental health services. In its general findings, the National Inquiry noted that the then existing relationship between public and private psychiatric systems militated against optimum patient care. The National Inquiry recommended that the federal Government, in consultation with state and territory governments, service providers, mental health professionals and related staff, and people with mental illness, should

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[6] Regulation 2.20(9) of the Migration Regulations sets out the requisite conditions for the granting of a Bridging Visa E (051). These include that the person:

(a) Does not have immigration clearance; and

(b) Either has:

(i) Made an application for a protection visa (see below at 3.3.2) that has not been finally determined; or

(ii) Applied for judicial review of a decision to refuse a protection visa; and

(c) Has a special need (based on health or previous experience of torture or trauma); and

(d) A medical specialist appointed by the Immigration Department has certified that the person cannot be properly cared for while in detention; and

(e) The Minister is satisfied that adequate arrangements have been made for his or her support in the community.

develop and implement national standards concerning the regulation and maintenance of psychiatric care and treatment.

23. In relation to in-patient care and treatment, the National Inquiry found that the rights of people with mental illness to receive care in a safe, therapeutic environment were not being universally respected. It found there had been instances of violations and abuse, and the right to treatment with humanity, respect and dignity was frequently disregarded. The National Inquiry recommended that independent statutory complaints investigation bodies be established in each state and territory to redress this situation. The National Inquiry also found that disturbed and mentally ill adolescents often end up in the juvenile justice system because no one has been able to recognise or address their underlying problems. It found that services for such young people in correctional institutions were limited.

24. In response to the National Inquiry, federal, state and territory governments have developed a National Mental Health Strategy (the NMHS) to improve public and private mental health facilities. Under the NMHS, national mental health service standards were developed and adopted in 1996. These national standards are based on the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. As part of the NMHS in each state and territory, Health Ministers are in the process of reforming their mental health legislation to ensure that the legislation conforms with the new national standards.

25. Under the Medicare Agreement (1993-1998),[7] all jurisdictions in Australia are committed to establishing a complaints body to resolve complaints in relation to health care providers, both public and private. It is envisaged that a Health Complaints Unit will be established in the office of the Ombudsman in each state and territory. It is proposed that this body deal with complaints against public medical officers and some residential carers in government institutions. The federal Government also adopted a number of mechanisms aimed at prevention of, and early intervention in, the development of mental illness in young people, in particular young homeless people.

3. Royal Commission into Aboriginal Deaths in Custody

26. The Royal Commission into Aboriginal Deaths in Custody was established jointly by the federal and state governments in August 1987. Its final report was tabled in federal Parliament on 9 May 1991. The Royal Commission investigated the deaths in custody from 1 January 1980 to 31 May 1989 of 99 Aboriginal and Torres Strait Islander people. It found that the deaths were not caused by deliberate violence or brutality by police or prison officers. However, the Royal Commission did find many system defects in relation to the care of persons in custody, many failures to exercise proper care and a generally poor standard of care. The Royal Commission also found that the principal explanation for the high numbers of Aboriginal and Torres Strait Islander deaths in police and prison custody was the over-representation of these people in both forms of custody. The final report made 339 recommendations which covered diverse areas ranging from police practices, prisons and the criminal justice system to Aboriginal and Torres Strait Islander social and health issues.

27. In 1992, all the states and territories joined with the federal Government in a national response to the Royal Commission's final report. All governments supported the overwhelming majority of the Royal Commission's 339 recommendations, and joined in making specific commitments to act on those recommendations. All governments are now cooperating in a comprehensive program of

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[7] Medicare is Australia's universal health system which provides free public hospital services and Government subsidized community based services by medical practitioners in Australia.

monitoring of the implementation of these recommendations and they report annually to their parliaments on their progress. In line with the Royal Commission's recommendations, the federal Government established a deaths in custody monitoring and research program within the Australian Institute of Criminology. This programme has been effective in keeping all governments and the community informed about trends in the incidence and patterns of deaths in all forms of custody throughout Australia.

28. Recommendation 333 of the Royal Commission into Aboriginal Deaths in Custody stated: 'While noting that in no case did the Commission find a breach of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, it is recommended that the Commonwealth Government should make a declaration under Article 22 of the Convention and take all steps necessary to become a party to the Optional Protocol to the International Covenant on Civil and Political Rights in order to provide a right of individual petition to the Committee against Torture and the Human Rights Committee, respectively.'

29. This recommendation has been fully implemented. On 28 January 1993 the Government of Australia made declarations under Articles 21 and 22 of the Convention (see appendix 1).

30. Implementation of other recommendations is ongoing. Notwithstanding actions to date, Aboriginal and Torres Strait Islander deaths in custody continue to occur.

31. In addition to the monitoring of the implementation of the Royal Commission's recommendations undertaken by Australian governments, the Aboriginal and Torres Strait Islander Social Justice Commissioner[8] may also monitor implementation as part of the Commissioner's role to carry out research for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders. In October 1996, the Commissioner published a report which uses the findings of 61 coroners inquests as a means of independently auditing implementation of the recommendations. A copy of the report, entitled *Indigenous Deaths in Custody 1989-1996*, is provided for the information of the Committee.

4. Royal Commission into the New South Wales Police Service

32. The Royal Commission into the New South Wales Police Service commenced on 13 May 1994 to investigate allegations of widespread corruption and partiality in the work of police officers at all ranks. The scope of the inquiry included the management and administration of the Service and the manner in which the existing police culture might have directly or indirectly contributed to improper practices.

33. The Royal Commission recommendations aimed to impose a regime whereby police are accountable for the action they take while on duty and the Police Service is accountable for upholding professional standards and ensuring that police behaviour is, at all times, consistent with those standards.

34. The key recommendations of the Royal Commission deal with the organization and management structure of the Service, the exercise of police powers during arrest, detention and charging, and testing of the integrity of individual police officers.

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[8] A Commissioner with the Human Rights and Equal Opportunity Commission.

35. Although intended to address the accountability concerns of the New South Wales Parliament, many of the recommendations aim to raise the standing of victims' rights and ensure that New South Wales continues to provide its residents with safeguards against the abuse of police powers.

36. The New South Wales government has fully supported all the Royal Commission recommendations in principle. The Police Service and other key agencies such as the Premier's Department are working individually and jointly to implement the recommendations. The New South Wales Police Commissioner has indicated that progress towards full implementation is well under way.

37. Recommendations in this inquiry that may be relevant to the Convention Against Torture include:

(a) The Williams Bill, which

(i) Sets a fixed period of time that a person can be kept in detention after arrest (8 hours); and

(ii) Specifies what can be done and what facilities must be made available to a person being questioned;

(b) Integrity testing. The *Police Legislation Further Amendment Act* 1996 provides statutory authority to conduct integrity testing programmes on officers who are suspected of serious misconduct and to remove from duty police officers whose lack of ethics undermines the criminal investigative skills of colleagues;

(c) Police Integrity Commission. The establishment of a Police Integrity Commission whose primary functions relate to the detection, prevention and investigation of serious police misconduct.

E. Other treaties

38. Australia has accepted scrutiny of its human rights record at the international level. Australia is a party to the six major human rights conventions. In addition to making declarations under articles 21 and 22 of the Convention, Australia has acceded to the Optional Protocol to the ICCPR and made the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. Other relevant treaties to which Australia is a party are listed at appendix one for the information of the Committee.

F. Cross-references

39. In addition, the Australian Government wishes to draw the attention of the Committee to the following references in the third and fourth reports under the ICCPR and the CRC:

- ICCPR art. 2;
- CRC, art. 2: Non discrimination – see paragraphs 170 - 198.

II. NO LIMITATION OR DEROGATION OF THE CONVENTION IN PUBLIC EMERGENCIES – ARTICLE 2, PARAGRAPHS 2 AND 3

A. Declaration of a state of emergency

40. In Australia, the federal, state and territory governments have the power to declare states of disaster or emergency. States of disaster or emergency are declared at times of natural disasters such as floods, droughts, cyclones and bushfires. There is no provision in Australian law for exceptions to the prohibition on torture at these times. Nor is there provision for such an exception in case of war, threat of war, internal political instability or other public disaster or emergency. Derogation is expressly prohibited under the federal *Crimes (Torture) Act 1988* which covers acts of torture outside Australia. Section 11 of that Act provides that it is not a defence in a proceeding for an offence under that Act that the act of torture was committed out of necessity arising from war, threat of war, internal political instability, public emergency or any other exceptional circumstance, nor that the act of torture was committed under the orders of a superior officer or public authority.

41. States of disaster or emergency may be declared only in conformity with the laws enacted in each jurisdiction. The governing laws in each jurisdiction are drafted in similar terms. States of disaster or emergency must be officially declared before exceptional measures may be taken. One of the main purposes of a declaration of a state of disaster or emergency is to provide a basis for practical and financial assistance to any part of the country which has been declared disaster or emergency affected. In general, these laws provide that exceptional measures may only be taken during a declared state of disaster or emergency in order to:

- Ensure the protection of life and property;
- Rescue injured or endangered persons;
- Remove anything from or secure anything to land that is a threat to the life or health of a person;
- Expedite the termination of the disaster or emergency; and
- Facilitate other emergency measures for the relief of suffering and distress.

B. Cross-references

42. The chapter on article 4 in Australia's third report under the ICCPR gives a comprehensive and detailed overview of the legal framework for the declaration of states of emergencies in Australia. See also the chapter in the third report under the ICCPR on article 5: Derogation of existing rights. We refer the Committee to these chapters of Australia's third report under the ICCPR for further relevant information.

III. LEGALLY PUNISHABLE OFFENCES, EXPULSION AND EXTRADITION – ARTICLES 3, 4, 5, 6, 7, 8 AND 9

A. Jurisdiction of the Government of Australia

43. Australia's territorial jurisdiction extends to all states and territories, including the internal territories of the Australian Capital Territory, the Northern Territory, the Jervis Bay Territory and the external territories. The external territories are the Australian Antarctic Territory, Norfolk Island, the Cocos (Keeling) Islands, Christmas Island, the Territory of Ashmore and Cartier Islands, the Coral Sea Islands Territory and the Territory of Heard Island and McDonald Islands. Australia's territorial

jurisdiction also includes its territorial seas. A fuller description of the Australian territories is found in the chapter on article 1 in Australia's third report under the ICCPR.

44. Australia generally exercises jurisdiction in relation to all people within its territory, whether nationals or non-nationals, including permanent and temporary residents and visitors. The obligations under article 5 of the Convention to establish jurisdiction when offences are committed on an Australian ship or aircraft are fulfilled by the federal *Crimes at Sea Act 1979*, the federal *Crimes (Aviation) Act 1991* and corresponding state and territory legislation.

45. There are also limited cases where Australia exercises jurisdiction over acts by nationals and non-nationals committed abroad. For example, under the federal *Crimes (Torture) Act 1988* a person in Australia suspected of having committed acts of torture outside Australia will be subject to prosecution under the relevant Australian criminal law in the same manner as if that act had been committed in Australia. A copy of this Act was included as appendix E in Australia's first report.

B. Domestic criminal penalties

46. As stated in Australia's first report, acts of torture which involve the infliction of physical pain and suffering committed within Australia's jurisdiction are offences under Australia's criminal law. The criminal law similarly prohibits attempts to commit these offences, and aiding, abetting or conspiring to commit these offences. State and territory governments have principal responsibility for legislating in these areas. Acts which constitute cruel, inhuman or degrading treatment or punishment are also offences under the laws of Australia. We refer the Committee to table 1 in the appendices for a list of the relevant legislation, delegated legislation or policy guidelines which proscribe conduct contrary to articles 4, 5 and 16 of the Convention.

47. As also stated in Australia's first report, mental pain and suffering are indirectly covered by the criminal law. There is common law authority with application in Australia for the view that an assault which causes an hysterical or nervous condition is an assault occasioning actual bodily harm (*R. v. Miller* [1954] 2 QB 282 and *R. v.Chan-Fook* [1994] 2 All ER 552).

48. Offences relevant to attempted acts of torture, the commission of torture, complicity in the commission of torture and the ordering of torture by a person in authority attract penalties of imprisonment in all jurisdictions. The relevant provisions and penalties of federal, state and territory criminal law were outlined in Australia's first report to the Committee and are updated and summarized in Appendix two: Offences and penalties. The operation of sentencing principles throughout Australia is described in detail in the chapter on article 15, under the heading 'Sentencing', in Australia's third report under the ICCPR.

National model criminal code

49. On 28 June 1990, the Standing Committee of Attorneys-General (SCAG) placed the question of the development of a national model criminal code for Australian jurisdictions on its agenda. In order to advance this concept, SCAG established a Model Criminal Code Officers Committee consisting of an officer from each Australian jurisdiction with expertise in criminal law and criminal justice matters. In 1994, the federal Government and the State and Territory Premiers' Leaders Forum endorsed the Model Criminal Code project as one of national significance. Since then, state and territory governments have been developing and implementing, on a progressive basis, model offences and penalties. SCAG's objective is for implementation of the Model Criminal Code by all jurisdictions by the year 2001. It is expected that the model criminal code will be implemented progressively in much the same way as the United States Model Penal Code has been implemented. The United States

Model Provisions have now been enacted in most States of the United States. In Australia, parts of the Code have already been adopted federally and by most state and territory governments.

50. A report on the Code released by the Model Criminal Code Officers Committee proposes that torture be an aggravating factor for any non-fatal offence against the person (from assault to abduction) which carries an additional penalty of up to five years' imprisonment over and above the normal criminal penalty. The final report draws on consultations on a discussion paper released in 1996.

C. Expulsion, refoulement and extradition

1. Expulsion

51. Non-citizens become liable for deportation under section 200 of the federal *Migration Act 1958*: as a result of criminal convictions for which they receive a sentence of imprisonment for one year or more (sect. 201); threats to national security coupled with an adverse security assessment (sect. 202); or convictions for serious crimes related to national security (sect. 203). Deportation is not mandatory. The decision to deport a person liable to deportation is a matter for the exercise of the personal discretion of the Minister for Immigration or the Minister's delegate pursuant to section 200.

52. A person liable for criminal deportation has a right (with certain exceptions) to a decision on his or her case as soon as possible after sentencing and has a right to appeal to the Administrative Appeals Tribunal (AAT) against a decision that he or she be deported. Where the right of appeal exists, the AAT is invested with determinative powers of review and is therefore able to overturn a decision by the Minister.

53. The federal Government is mindful of maintaining a balance between the need for community protection against criminal behaviour and the human rights of the deportee and his or her family, including the consideration of whether the deportee may suffer persecution in the country to which he or she is to be deported. The most important broad criteria on which decisions to deport are based are: the nature of the crime; Australia's international human rights obligations; the possibility of recidivism; the contribution the person has made to the community or may reasonably be expected to make in the future; and any family and/or social ties that already exist.

2. Refoulement

54. Australia offers protection visas to asylum seekers who meet the United Nations definition of a refugee, as set out in the 1951 Convention and 1967 Protocol relating to the Status of Refugees (the Refugee Convention). Australia also offers protection visas to asylum seekers who meet the guidelines for stay in Australia on humanitarian grounds. The effect of the protection visa is to allow a person to remain permanently in Australia and, after satisfying the statutory criteria for citizenship, including a residency requirement, to be granted Australian citizenship.

55. The process of granting a protection visa involves a determination of refugee status made by an immigration officer. Unsuccessful applicants can seek review of the decision by taking the matter to the Refugee Review Tribunal (RRT). The RRT is an independent statutory merits-review body which has the power to affirm, vary or remit to the Minister (for reconsideration) decisions regarding refugee protection.

56. On return from the RRT each unsuccessful case is assessed by the Department of Immigration and Multicultural Affairs against the Minister's Guidelines for Stay in Australia on Humanitarian

Grounds. The guidelines are intended to assist in the identification of persons of humanitarian concern who do not meet the Refugee Convention definition of "refugee" but who nonetheless face a significant threat to personal security, human rights or dignity. Such cases are then referred to the Minister who may exercise his or her discretionary power under section 417 of the *Migration Act 1958* to substitute the decision of the RRT for one that is more favourable to the applicant. Any individual or body may request the Minister to exercise his or her discretionary powers under section 417 in a particular case.

57. Where there is a perceived error of law in the decision of the RRT, it is possible to appeal the decision to a single judge of the Federal Court for judicial review of the decision. Applications for appeal must be lodged within 28 days of receipt of the RRT decision. The Federal Court has the power to either uphold the refusal to grant a protection visa or to direct that the application be reassessed. Further appeal to the Full Bench of the Federal Court is also available.

3. Extradition

58. An extraditable offence is generally one which is punishable by at least a maximum period of imprisonment for one year in both Australia and the requesting State. The Committee's attention is drawn to the chapter on article 8 in Australia's first report where the general law in relation to extradition is described.

59. In order to meet Australia's obligations in relation to extradition under the Convention, subparagraph 22(3)(b) of the federal *Extradition Act 1988* prohibits the surrender of a person who has been found to be eligible for extradition by a domestic court unless the federal Attorney-General is satisfied that, upon surrender, the person will not be subjected to torture.

60. Further, regulations under the *Extradition Act 1988* apply the Act to the States parties to the Convention. This enables Australia to consider a request for extradition from a State party in relation to a person alleged to have committed an offence referred to in article 4 of the Convention. The request for extradition would be dealt with in accordance with the requirements of the *Extradition Act 1988*. We draw the Committee's attention to the Extradition (Torture) Regulations which were included as appendix G in the first report. Table 4 lists all of the States parties to the Convention with which Australia has extradition arrangements. This list updates appendix G of the first report.

61. Australia has developed a network of modern bilateral extradition treaties. These treaties contain a range of safeguards as grounds upon which an extradition request may be refused. For example, extradition may be refused if the offence for which extradition is sought is a political offence, the person whose extradition has been requested is likely to be prosecuted, punished or otherwise prejudiced because of race, religion, nationality or political opinion, or the offence for which extradition is being sought is an offence which is punishable by torture or cruel, inhuman or degrading treatment.

4. Mutual assistance in criminal matters

62. As outlined in the first report in the chapter on article 9, Australia meets its obligations under the Convention to provide mutual assistance in criminal matters through the operation of the *Mutual Assistance in Criminal Matters Act 1987*. Section 7(1) of this Act applies the Act to all foreign countries. This permits Australia to provide assistance to another country, subject to certain safeguards and requirements provided for in the Act. This assistance includes:

- The taking of evidence, or the production of any document or other article, for the purposes of a criminal proceeding; and
- The issue of a search warrant and the seizure of anything relevant to a criminal proceeding or investigation.

63. Where Australia has a mutual assistance treaty on criminal matters with another State party to the Convention, it would look to use that treaty as the basis for providing assistance to, or requesting assistance from, that State.

D. Cross-references

64. See also:

- Third Report under the ICCPR articles 6, 7, 9, 10, 14 and 15;
- First report under the CRC, article 22: Refugee children – paragraphs 1351 - 1381; article 34: Special protection measures – sexual exploitation and abuse - paragraphs 1735 - 1764; article 35: Sale, trafficking and abduction – see paragraphs 1767 - 1777; article 37(a): The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment – paragraphs 392 - 438.

IV. PREVENTATIVE LEGISLATIVE, ADMINISTRATIVE, JUDICIAL AND OTHER MEASURES – ARTICLES 10, 11 AND 16(1)

A. Systematic review

65. As a matter of general practice, all rules and practices regarding the custody and treatment of persons in detention, including their interrogation where applicable, are subject to ongoing internal review in all Australian jurisdictions. The attention of the Committee is drawn to the chapter on article 11 in the first report for a description of these review mechanisms.

B. Preventative measures

1. Police officers

66. As stated in the first report in the chapter on article 10, relevant legislation and policy instructions in every jurisdiction in Australia direct police officers to assume responsibility for the safety and welfare of the public, including prisoners (see table 1).

67. Police officers in each Australian jurisdiction are trained in the relevant law applicable to their duties. This training details the circumstances in which force may be used in the course of their duties but emphasises that force is only to be applied where necessary and to the minimum extent necessary. The training of police officers varies from state to state, but all states have established intensive and regular programs in which police officers receive information about their statutory obligations. The Australian Federal Police also have a similar program.

2. Prison officers

68. As stated in Australia's first report in the chapter on article 10, the administration of prisons and the training of prison officers is a matter for each state and territory in Australia. National guidelines

modelled on the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment have been developed. Relevant state and territory legislation and policy instructions (see table 1) direct prison officers to assume responsibility for the care and custody of prisoners. This includes the express obligation to interact with prisoners in a way that is both humane and courteous, and with respect for their human dignity.

69. As with police officers, the training of prison officers varies from state to state, but all States have established intensive and regular programmes in which prison officers receive information about their statutory obligations. This training details the circumstances in which force may be used but emphasises that force is only to be applied where necessary and to the minimum extent necessary.

3. Military personnel

70. Australian Defence Force (ADF) members participating in international or non-international armed conflict are bound by the federal Geneva Conventions Act 1957. The Geneva Conventions Act as amended by the federal Geneva Conventions Amendment Act 1991 implements the 1949 Geneva Conventions and Additional Protocol One. Under section 7 of the Geneva Conventions Act, any person who, in Australia or elsewhere, commits, aids, abets or procures the commission by another person of a grave breach of any of the Conventions is guilty of an indictable offence. Grave breaches include wilful killing, torture or inhuman treatment, including biological experiments, or wilfully causing great suffering or serious injury to body or health.

71. Information regarding the prohibition against torture or other cruel, inhuman or degrading treatment or punishment is included in a range of military courses which contain international humanitarian law components and which target service members at different stages of their careers. In particular, instructions on the basic principles of international humanitarian law are given to ADF members deployed as peace-keepers and in other operations.

72. Detailed instructions under the federal Defence Force Discipline Act 1982 for the administration of military detention centres prohibit the use of force against detainees (Defence Instruction (Army) 58-1) and provide that persons held in detention under the Act are to be treated with humanity and with respect for human dignity, and are not to be subjected to cruel, inhuman or degrading treatment. The punishment of ADF members who have committed offences under the Defence Force Discipline Act 1982 is detailed in Australia's first report in the chapter on article 10 under the heading "Military personnel".

4. Immigration officers

73. Immigration officers who have responsibility for the location and, where appropriate, the detention of unlawful non-citizens exercise compliance and enforcement functions. These officers are provided with training to ensure that they understand the legal parameters within which searches and detention may be carried out.

74. An immigration officer may only use such reasonable force as is necessary for the exercise of his or her powers under the federal Migration Act 1958. This includes the power:

- To search for and seize – under the authority of a validly issued search warrant – any document such as tickets or passports reasonably suspected of being used to enter Australia unlawfully;

- To detain a person for questioning for up to four hours if there is a reasonable suspicion that the person is not lawfully in Australia;
- To search a person for the purposes of the Migration Act without subjecting that person to greater indignity than necessary; and
- By operation of law, to place a person in administrative detention.

75. Immigration officers, whether based in Australia or overseas and who conduct interviews with possible victims of torture and trauma, receive training on matters which include cross-cultural sensitivity and advice on identifying possible victims of torture and trauma for referral to appropriate counselling and support services.

76. The federal Government has announced its intention to contract out the delivery of detention and removal services at immigration detention centres including guarding, catering, health, welfare and educational services. The successful detention service provider will have to deliver detention services in accordance with Immigration Detention Standards to be developed by the Department of Immigration and Multicultural Affairs in consultation with the Federal Ombudsman's Office. These Standards will set out the Government's obligations to meet the individual needs of detainees in a culturally appropriate way while at the same time providing safe and secure detention. They will specify the distinctive nature of services that are required in an immigration detention environment, and will emphasise the need for sensitive treatment of the detainee populations which might include torture and trauma sufferers, family groups, children and the elderly, persons with a fear of authority and persons who are seeking to engage Australia's protection obligations under the Refugee Convention. The Immigration Detention Standards will set out standards for the selection, training and personal attributes of the staff of the service provider who will be engaged in guarding and security services at Immigration Detention Centres.

77. The Department of Immigration and Multicultural Affairs will monitor the contractor's performance closely and will retain an official presence at each immigration detention centre. Moreover, although the Government intends to contract out the delivery of detention services, it will continue to have a duty of care towards detainees.

5. Customs officers

78. Public officers exercising statutory powers relating to investigations and passenger processing under the federal Customs Act 1901 are trained to be particularly sensitive to the rights and dignity of members of the public. Examples of the kind of functions under the Customs Act for which this training is considered necessary include:

- Interviewing of a person suspected of having committed a federal offence; and
- Physically detaining and searching a person seeking to enter Australia who is suspected of carrying prohibited goods.

79. The conduct of officers is prescribed by law and the Australian Customs Service takes seriously its responsibility to provide training for officers to ensure that their conduct is both lawful and appropriate.

80. In conducting personal searches of individuals, customs officers must not use more force or subject a person to greater indignity than is reasonable and necessary during the course of their duties. A customs officer must have reasonable grounds to conduct a search. Any frisk or external search

must be carried out by an officer of the same sex as the detainee and in the presence of a third person (also of the same sex), usually another customs officer, who acts as a witness. Special administrative and legislative arrangements govern persons under 18 years of age or who are otherwise in need of protection. Interpreter facilities are provided where detainees are unable to communicate with reasonable fluency in English.

6. Public medical officers

81. In every jurisdiction in Australia, the law regulates the rights of adults and children to consent to medical and dental treatment (see table 1). As stated in the first report, medical education and professional ethical codes ensure and underline the particular responsibility of the medical profession towards the preservation of life and the minimisation of suffering of all persons.

7. Residential carers

82. In Australia, institutions which provide care for a range of people, such as children in out-of-family care, people with disabilities and the frail aged, may be run by Government or by the private sector. Restraint or detention of a resident is generally circumscribed by law and may only be used when reasonable or necessary for the welfare of an individual at a particular time. The laws of each state and territory provide specific avenues of complaint to that person or his or her advocate, parent or guardian, or mediator (see appendix three) and guarantee that an independent advocate, guardian or mediator may represent the interests of a person in residential care.

83. The conduct of residential carers is a matter for each state and territory government in Australia. Conduct of a residential carer in a public institution which is contrary to the welfare and safety of an individual is punishable by law (see table 1). During the induction of residential carers in public employment, an employer will provide education and information about the appropriate standards of treatment required of the officer in the performance of his or her duties. At this time, staff are generally issued with detailed written instructions on their obligations towards residents, including a written charter of resident rights designed to ensure that the treatment of residents is consonant with their human dignity.

C. Public school teachers

84. Public school teachers have a responsibility to regulate the behaviour of students. In every state and territory relevant legislation (see table 1) and policy guidelines strictly circumscribe disciplinary measures which may be used by public school teachers. The use of school detention, corporal punishment, suspension or expulsion of a student may only be used if, in all the circumstances, it is reasonable and necessary for the punishment of a student. There are no exceptions to this rules.

85. Teacher training is a matter for each state and territory. However, each state and territory requires its student teachers to complete pre-service and in-service training courses. Amongst other things, these courses emphasize the fact that all public school teachers must understand the lawful basis on which they may treat and punish students under their care and control. In order to sensitize teachers to the most appropriate ways to respect the dignity of all students, specialized elective training is also offered in relation to the treatment of female and male students, students with disabilities and students from diverse cultural backgrounds.

V. THE RIGHT TO PROCEDURAL GUARANTEES, ARTICLES 12, 13, 14, 15 AND 16

A. Use of statements induced by torture

86. In each criminal jurisdiction in Australia, either statute law or the common law ensure that any statement induced by torture cannot be admitted in evidence in court. Generally, investigating officers are required, or at least encouraged, to make audio or video recordings of interviews in which suspects make admissions or confessions, whenever it is reasonably practicable to so.

87. The common law in relation to the use of statements induced by torture applies in the Northern Territory, South Australia, Tasmania and Victoria. We draw the attention of the Committee to the chapter on article 15 in the first report for a description of the relevant common law.

88. Federal legislation (Crimes Act 1914 and Evidence Act 1995) and New South Wales legislation (Evidence Act 1995) provide for the exclusion of admissions influenced by violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission or towards another person, or a threat of conduct of that kind. These laws also provide that the court has a general discretion to exclude involuntary admissions of guilt, as well as illegally or improperly obtained evidence. Further, section 424A of the New South Wales Crimes Act 1900 provides that, in the absence of a reasonable excuse, the failure of a police officer to tape-record an interview with an accused person renders inadmissible any admission made by the accused.

89. Sections 570-570H of the Western Australian Criminal Code provide that, in the absence of a reasonable excuse, the failure of police officers to video-tape an interview of a person accused of a serious offence will render inadmissible any admission made by the accused. Similarly, section 10 of the Queensland Criminal Law Amendment Act 1994 provides that no confession which has been induced by a threat or promise may be received in evidence in any criminal proceeding.

B. The complaint and investigation of acts of torture and other cruel, inhuman or degrading treatment or punishment

90. The legal system in Australia is described in general terms in the first report. In Australia's core document more specialized complaints and investigation bodies are described under the headings Administrative law remedies and Specialized human rights machinery.

91. We also draw the Committee's attention to the chapters on articles 12 and 13 in the first report which outline the steps normally taken in making an investigation into the conduct of a public official. In order to expand on this information, Australia now provides the following details.

1. Criminal sanctions

92. As noted above, an act by any person, including public officials, which amounted to torture or other cruel, inhuman or degrading treatment or punishment may be an offence under the general criminal law (see appendix two) and so would be investigated and prosecuted like any other criminal offence in Australia.

2. Civil sanctions

93. We refer the Committee to the part of this report headed Compensation for acts of torture or other cruel, inhuman or degrading treatment or punishment (sect. D below) for a description of the general civil law sanctions which exist throughout Australia against such actions of any individual.

C. Complaints mechanisms

94. As discussed in Part IV of this report, most public officers are accountable to specific complaints authorities which regulate the conduct of particular occupational groups (see appendix three). In addition, the conduct of all government employees in federal, state or territory government employment is governed by specific legislation which is designed to ensure there is full public accountability for the conduct and behaviour of public officers (see table 1). This legislation covers a wide range of matters, only some of which may be relevant for the purposes of this report. The legislation, for example, covers the duty to avoid conflict of interest; dealing with gifts, favours and other benefits; the use of public monies; discrimination in the workplace; security of information; and avoiding improper use of official powers. It is generally accompanied by more detailed written standards of behaviour which are set down in Departmental Codes of Conduct.

95. The disciplinary arrangements for any government employee who fails to meet these standards have some fundamental common features. Proceedings are usually conducted by independent administrative tribunals, or courts that are regulated by law and the due process of the law. Depending on the severity of the conduct involved, sanctions could include formal admonition, a fine, suspension from employment with or without pay, or transfer, demotion or dismissai from employment, in addition to any applicable criminal sanction.

1. Ombudsmen and Parliamentary Commissioners

96. In general, complaints authorities which regulate the conduct of particular occupational groups (see appendix three) have the power to conduct investigations on their own initiative, or upon complaint from individuals or groups. This is true also for Ombudsmen and Parliamentary Commissioners who, through the operation of specific federal, state and territory legislation (see table 2), have jurisdiction to review independently the acts of any public officer at their own initiative, as well as in response to a complaint. Any person has the right to make a complaint to the Ombudsman or Parliamentary Commissioner. No special standing is required. There is no fee for making a complaint to the Ombudsman or Parliamentary Commissioner.

97. In every jurisdiction, the Ombudsman or Parliamentary Commissioner has the power to investigate the acts of public officials and to investigate matters of administration of the executive government. In Queensland and South Australia this power does not extend to police officers because a separate specialist body has been set up for that purpose (see appendix 3.1). The investigative powers of the Ombudsman or Parliamentary Commissioner include the ability to enter premises, inspect documents, require persons to attend and answer questions and to produce documents. Each Ombudsman or Parliamentary Commissioner has the statutory power to form an opinion on a matter brought to his or her attention, and make recommendations in relation to it to the relevant public authority.

98. Where an Ombudsman or Parliamentary Commissioner forms the opinion that the public authority has failed to take appropriate action in response to its report and recommendations, he or she may report on this failure to the appropriate decision-maker. In some cases this will be the responsible minister and, ultimately, depending on the jurisdiction, the Prime Minister, the Governor in Council (in Victoria), or the Premier (in States other than Victoria). The Ombudsman or Parliamentary Commissioner also has the power to make special reports to Parliament, a step which is only taken if an adequate response appears not to be forthcoming. In addition, all the Ombudsmen and Parliamentary Commissioners publish annual reports in which they can highlight instances of non-compliance.

99. To illustrate to the Committee how the powers of the Ombudsman operate, Australia notes that the Federal Ombudsman investigated the conduct of customs officers in November 1994 in relation to the external search of a female Taiwanese national.

100. Newspaper articles contained sensational allegations that a woman had suffered a nervous breakdown at Sydney Airport after she had been forcibly stripped naked by Customs Officers and her clothes torn during a struggle. These reports also sparked several written complaints from members of the public and civil rights organizations.

101. The Minister responsible for Customs ordered an investigation and a review of procedures with particular reference to the incident reported in the media. The Australian Customs Service investigation found that officers acted correctly and in accordance with legislation and operating guidelines. The review of procedures led to the Australian Customs Service introducing an automatic review by an independent Justice of the Peace in cases where a person does not consent to an external search. A number of other changes to procedures, designed to further safeguard the rights of passengers being detained for personal search, were also made.

102. The Federal Ombudsman also initiated an investigation which found that '...there were reasonable grounds to search her [the Taiwanese woman] and ... the level of force used by Australian Customs Service Officers was limited to the level necessary to detain her and to conduct the search.' The Ombudsman commented that newspaper reports at the time did not accurately reflect the true facts of the case.

2. Complaints about the conduct of police

103. Complaints about police conduct are generally dealt with at first instance by an internal investigation body, subject to review or monitoring by an external body such as the Ombudsman. Several jurisdictions have created specific legislative schemes for the investigation of complaints about police. These are summarized at appendix 3.1. The following examples illustrate how these complaints procedures operate.

(a) *Investigation into alleged use of excessive force by the Victoria Police*

104. The Deputy Ombudsman (Police Complaints) in Victoria conducted an investigation into the alleged use of excessive force by the Victoria Police against demonstrators at the Richmond Secondary College on Monday, 13 December 1993. His report in this instance was tabled in the Victorian Parliament (Deputy Ombudsman's Report Number 11 – November 1994).

105. The Deputy Ombudsman received a number of complaints from demonstrators who had been removed by police after staging demonstrations outside a suburban school. Around the same time he also received complaints from demonstrators who had been outside a government office complex and had been removed by police. Because of the nature of the public complaints and the level of public interest, he commenced an investigation into both events. The combined report of his investigations was laid before both houses of the Victorian Parliament.

106. This summary focuses on the investigation of complaints arising from the policing of the school protest.

107. The Deputy Ombudsman's staff interviewed 28 civilian witnesses, 19 police (including a police training instructor) and three ambulance officers. The site of the complaint and video footage were also viewed, as were medical reports of injuries. The Deputy Ombudsman's report summarized the

evidence of key witnesses, video evidence, and relevant policy instructions and training procedures. The Deputy Ombudsman then drew conclusions regarding general and specific complaints, the actions of individual police members and the planning and conduct of the police operation in general. He drew conclusions as to whether or not police actions were lawful or justified.

108. The Deputy Ombudsman then made a series of recommendations regarding improvements to policy and procedures for "crowd control" situations. He also made recommendations regarding a number of individual police members, although these were presented to the Chief Commissioner and to complainants, but not to Parliament. As a result, disciplinary charges were laid against a number of police members and crowd control policies and procedures were reviewed.

(b) *Investigation into an alleged assault by the South Australian Police*

109. By way of further example, a prisoner was brought to a suburban police station in South Australia and, in the course of being charged, the prisoner punched one of the arresting officers. The prisoner was restrained by a number of other officers present. While the prisoner was fully restrained, face down on the floor, the arresting officer punched the prisoner to the head three times.

110. The incident was recorded on the video monitor and came to the attention of the Officer-in-Charge of the police station, who reported the matter to his superiors. The prisoner complained to the Police Complaints Authority in South Australia.

111. Following an investigation, the arresting officer was charged with assault, found guilty and fined $400. He was subsequently transferred by the Commissioner of Police from operational duties for a period of six months, during which time his conduct and performance were closely monitored.

112. Various other police officers who were present at the time of the assault will also be subjected to internal disciplinary action owing their failure to report the assault and their subsequent denial when interviewed that the assault had occurred.

3. Complaints about the conduct of prison officers

113. In relation to prisons, complaints may generally be made directly to the Prison Manager or, alternatively, to Official Visitors or Inspectors, who are independent persons with the statutory function of visiting prisons and inquiring into the treatment and condition of prisoners. The Ombudsman also has jurisdiction in most states to receive complaints about the treatment of prisoners. These complaints mechanisms are summarized at appendix 3.2.

114. In New South Wales, prisoners are also able to send privileged letters to a range of organizations including the Anti-Discrimination Board, the Legal Aid Commission, the Independent Commission Against Corruption, the Privacy Committee and HREOC.

4. Complaints about the conduct of military personnel

115. Defence (Inquiry) Regulations, made pursuant to the federal Defence Act 1903, provide for the establishment of General Courts of Inquiry, Boards of Inquiry and the appointment of Investigating Officers to inquire into matters concerning the Defence Force including complaints about the behaviour of Defence Force members. Section 101 of the federal Defence Force Discipline Act 1982 relates to the investigation of disciplinary offences. Investigations are carried out by military police and naval police coxswains and may eventually lead to charges being laid against Defence Force members. These charges are then heard by service disciplinary tribunals. There are also external

bodies which inquire into possible complaints raised about Defence Force personnel. They are the Federal Ombudsman (Deputy Ombudsman (Defence)) and HREOC. These complaints mechanisms are summarised at appendix 3.3.

5. Complaints about the conduct of immigration officers

116. Were a complaint to arise in relation to the conduct of an Immigration Officer, it could be made to the Minister or the Secretary or a Regional Director of the Department of Immigration and Multicultural Affairs, and it would be investigated internally. Internal investigations are conducted by the Internal Investigations Section of the Department of Immigration and Multicultural Affairs. Alternatively, a person may complain to the federal Ombudsman or HREOC. These avenues provide an independent means of reviewing the probity of the administrative process. These complaints mechanisms are summarized at appendix 3.4.

5.1 Investigation into administrative detention

117. By way of illustration, Australia refers to the case of Ms. F. Ms. F was from the United Kingdom and was detained in the Mullewa Correctional Centre for a period of six days. Ms. F attended Chatswood police station on 7 December 1993 and stated, among other things, that she had overstayed her visa.

118. An Immigration Officer attended the police station and Ms F stated to the officer that she would kill herself if she could not stay in Australia. She accompanied the officer to the immigration office where she again allegedly threatened to kill herself. The officer contacted the prisoner classification and placement unit to have Ms. F placed in the Mullewa Correctional Centre where she could be watched more closely than she could be at the Villawood Immigration Detention Centre (IDC). She was examined by a doctor and the medical certificate stated, among other things, that she "displays sociopathic character disturbances". She was deported on 11 December 1993.

119. The Federal Ombudsman was of the view that the extent to which detainees can be kept under observation in IDCs needs to be clarified. The Ombudsman stated that, as Ms. F had not done anything criminal and the risk was to herself, it would have been appropriate to approach a psychiatric facility for assessment and assistance. Further, the Ombudsman was of the view that, as many people in IDCs are under stress and depressed, it should be a part of the normal operation of an Immigration Officer to be able to adequately monitor and protect such people from readily taking their own lives. The Immigration Detention Standards, to be developed by the Department of Immigration and Multicultural Affairs in conjunction with the Federal Ombudsman's Office, will provide specifically for detainees in need of psychiatric treatment to have access to such services. Further, the Department of Immigration and Multicultural Affairs, in consultation with the Federal Ombudsman, has developed a formal policy (Migration Series Instruction 157) which governs the circumstances under which an immigration detainee can be transferred to a State prison.

6. Complaints about the conduct of customs officials

120. Were a complaint to arise in relation to the conduct of a Customs Officer, it could be made to the Minister, the Chief Executive Officer, or a Regional Director of the Australian Customs Service and it would be investigated internally. Alternatively, a person may complain to the Office of the Federal Ombudsman or HREOC. These avenues provide an independent means of reviewing the probity of the administrative process. These complaints mechanisms are summarized at appendix 3.5.

7. Complaints about the conduct of public medical officers

121. The Professional Medical Board in each state or territory has the statutory power to conduct inquiries and disciplinary proceedings against any member of the medical profession about whom a complaint is made. A Board may admonish, fine or deregister (either temporarily or permanently) any member of the medical profession for unprofessional conduct. Complaints about the conduct of public medical officers may also be made directly to the Hospital Board, Government Medical Complaints Unit, Ombudsman, Anti-Discrimination Commission, or Minister for Health of the state or territory in question. These complaints mechanisms are summarised at appendix 3.6.

8. Complaints about the conduct of residential carers

122. Residential carers work with individuals who may or may not have the legal or social capacity to recognize and represent their own needs. As noted above, the laws of each state and territory guarantee that an independent advocate, parent, guardian or mediator may represent the interests of a person in residential care. In general, complaints about the treatment of an individual or individuals may be made directly to the Government Minister or institution concerned. Such a complaint would instigate an internal inquiry. Alternatively, an independent inquiry may be conducted by the relevant Ombudsman or Anti-Discrimination Commission, depending on the circumstances of the case. These complaints mechanisms are summarized at appendix 3.7.

8.1 Criminal Justice Commission investigation of a carer of the disabled

123. By way of illustration, Australia refers to the inquiry into allegations of official misconduct at the Basil Stafford Centre, Queensland. Basil Stafford Centre is a residential facility for the disabled administered by the then Queensland Department of Family Services and Aboriginal and Islander Affairs. The Criminal Justice Commission (CJC) investigated allegations of abuse and/or gross neglect of a severely and profoundly intellectually disabled person residing at Basil Stafford Centre. The public inquiry related to the period 1 January 1985 to 31 December 1993.

124. The CJC report was tabled in the Queensland Parliament in April 1995. It found serious instances of negligence in relation to clients residing at the Centre. The major recommendations were that: the Centre be closed; certain matters be referred to the CJC Misconduct Tribunal; the coroner be required to hold an inquest into cases of sudden death in such an institution; the recruitment, training, supervision and accountability of staff at the Centre be improved; staff/client ratios be improved; procedures be reviewed and improved; medical facilities be upgraded; and the Centre's operations be reviewed periodically.

125. In response to the recommendations a number of major changes were made. A number of residents were provided with the opportunity to move into the community under a $2.6 million package approved by the federal Government in August 1997. This package, along with a $2.6 million refurbishment at the Centre, will help improve the quality of lives of the 100 people with disabilities who currently reside at Basil Stafford Centre. It is expected that some residents will have relocated to public housing in their community of origin or choice by mid-1998. Other recommendations have been addressed through the resolution of particular complaints by the CJC, a general review of the coroner's legislation by the Justice Department, a statutory requirement for the disclosure of criminal convictions by potential staff of the Centre, improved staff/client ratios, staff training and procedures, and the upgrading of medical facilities at the Centre.

9. Complaints about the conduct of public school teachers

126. Public school teachers are accountable to the school principal, and the School Board or the School Council, for their conduct towards students. Complaints may also be made to the state or territory government department responsible for education. External review is also available. A student, or his/her parent or guardian, may complain about the conduct of a public school teacher to the Ombudsman or the anti-discrimination agency in their state or territory, depending on the circumstances of the particular case. These complaints mechanisms are summarised at appendix 3.8.

D. Compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment

127. As outlined in the chapter on article 14 in the first report, fair and adequate compensation for the victim of an act of torture or cruel, inhuman or other degrading treatment or punishment is met by state and territory criminal injuries compensation legislation when the act in question amounts to a criminal offence (see table 3) and by common law rights in tort.

128. In each state and territory, criminal injuries compensation legislation provides that a victim may recover compensation when the offender has been convicted, or even when the offender has not been found, or has not been prosecuted. Under the legislation, a dependent of a victim who has suffered financial loss because of the killing of the victim may also be entitled to compensation.

129. In each state and territory, the victim and/or the relatives of a deceased victim may also have the right to bring a civil action in the courts for damages based on their common law rights in tort. Common law damages may be awarded for physical injury, nervous shock, medical or other expenses and financial loss.

130. There is another possible, but exceptional, avenue of compensation for victims of an act of torture or other cruel, inhuman or degrading treatment or punishment. Even if there is no technical legal liability on the part of the government to make a payment, but the person has been unfairly disadvantaged by some act of the government, the responsible government may make an ex gratia payment to the victim or his or her family. This may arise in circumstances where the application of relevant legislation would have anomalous, unjust, or otherwise unacceptable consequences. For example, where there has been a miscarriage of justice resulting in the incorrect imprisonment of a person for a criminal offence, the government may exercise its prerogative of mercy to release the person involved and pay the individual a sum of money.

Criminal injuries compensation for police shootings – Two case studies

131. David Gundy was a 29year-old Aboriginal man who died as a result of a police raid on his home on 27 April 1989. The police raided the home with the intention of apprehending a suspect in the murder of a police officer.

132. The Royal Commissioner into Aboriginal Deaths in Custody, Commissioner J H Wootten, found that the police involved had no intention of injuring Mr. Gundy and that Mr. Gundy's Aboriginality was not a factor in his death.

133. As a result of the incident, the Police Service took the following action:

- Placed tighter controls and guidelines on the obtaining and execution of search warrants;

- Enhanced training procedures for the Special Weapons and Operations Section;
- Reviewed intelligence gathering and dissemination processes;
- Upgraded training for investigators; and
- Released a major incident policy specifically designed to offer help to those affected by police actions.

134. In his report, Commissioner Wootten recommended that compensation be paid to Doreen Eatts and Bradley Eatts, the partner and son of Mr. Gundy, for damage to them arising out of the police raid on their premises. In the response to the report of the inquiry into the death of David John Gundy, the Police Service outlined that compensation was a matter for the state government. Subsequently, the state government paid compensation to members of Mr. Gundy's family.

135. Darren Brennan was shot in the course of a New South Wales police operation on 17 June 1990. When police entered Mr. Brennan's home in inner Western Sydney, a struggle took place between Mr. Brennan and one of the officers. This resulted in a shotgun being discharged and Mr. Brennan being seriously wounded.

136. The matter was investigated by the Police Service, reviewed by the Ombudsman and referred to the Police Tribunal. The findings of these various bodies led to changes to a number of police practices and procedures, including those involving search warrants and raids.

E. Medical and psychological rehabilitation after acts of torture or other cruel, inhuman or degrading treatment or punishment

137. We draw the attention of the Committee to the chapter on article 14 in the first report for further information.

138. Since the First Report to the Committee, specialist torture and trauma services have been established in all capital cities of Australia to assist people who have been tortured or suffered traumatic experiences associated with organized violence in other countries. Torture and trauma victims are predominantly refugees and people who have entered Australia on special humanitarian grounds. The Australian Government provides funding for a range of services to victims of torture and trauma, including assessment, counselling, coordination of referral for medical and dental care, group discussion and training of health care professionals.

F. Cross-references

139. In addition, the Australian Government wishes to draw the attention of the Committee to the following references in its third and fourth Reports under the ICCPR and in its first report under the CRC:

- ICCPR, articles 10 and 14;
- CRC article 37(b), (c) and (d): Children deprived of their liberty –paragraphs 1483 - 1691; article 39: Physical and psychological recovery of children – paragraphs 1385 - 1390; article 40: Procedural guarantees and the administration of juvenile justice – paragraphs 1391 - 1482.

APPENDIX ONE

AUSTRALIA'S PARTICIPATION IN OTHER HUMAN RIGHTS TREATIES

	Ratification, Accession or Declaration by Australia	*Entry into Force for Australia*	*Reservations*
International Covenant on Economic, Social and Cultural Rights (ICESCR)	10 December 1975	10 March 1976	
International Covenant on Civil and Political Rights (ICCPR)	13 August 1980	13 November 1980	Article 10 paras 2(a), 2(b), 3; Article 14 para 6; Article 20
(First) Optional Protocol to the ICCPR	25 September 1991	25 December 1991	
Second Optional Protocol to the ICCPR	2 October 1990	2 October 1990	
Declaration under Article 41 of the ICCPR	28 January 1993	28 January 1993	
First, Second, Third and Fourth Geneva Conventions and Additional Protocols 1 and 2	14 October 1958	14 April 1959	
Convention on the Prevention and Punishment of the Crime of Genocide	8 July 1949	12 January 1951	
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	30 September 1975	30 October 1975	Article 4(a)
Declaration under Article 14 of CERD	28 January 1993	28 January 1993	
International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	28 July 1983	27 August 1983	Maternity leave and women in combat and combat-related duties.
Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)	8 August 1989	7 September 1989	
Declaration under Article 21 of CAT	28 January 1993	28 January 1993	
Declaration under Article 22 of CAT	28 January 1993	28 January 1993	
Convention on the Rights of the Child (CROC)	17 December 1990	16 January 1991	Article 37(c)
Vienna Convention on Consular Relations	12 February 1973	14 March 1973	
Convention relating to the Status of Refugees	22 January 1954	22 April 1954	
Protocol relating to the Status of Refugees	13 December 1973	13 December 1973	

APPENDIX TWO

OFFENCES AND PENALTIES

Section	Offence	Maximum Penalty
Federal		
Geneva Conventions Act 1957		
	Wilful killing of a person protected by the Geneva Convention or by Additional Protocol One	life
	A grave breach of the Geneva Conventions other than wilful killing.	14 years
Australian Capital Territory		
Crimes Act 1900		
s.19	Intentionally inflicting grievous bodily harm	15 years
s.20	Recklessly inflicting grievous bodily harm	10 years
s.21	Wounding	5 years
s.22	Assault with intent to commit certain indictable offences (ie. those which are punishable with a maximum period of imprisonment for 5 years or more)	5 years
s.23	Inflicting actual bodily harm	5 years
s.24	Assault occasioning actual bodily harm	5 years
s.25	Causing grievous bodily harm	2 years
s.26	Common assault	2 years
s.27	Acts endangering life	(a) where the offence is intentional and nlawful - 10 years; and (b) where there is intention to commit an indictable offence against the person) punishable with more than 10 years'im-prisonment - 15 years
s.28	Acts endangering health	5 years
s.30	Threat to kill	10 years
s.31	Threat to inflict grievous bodily harm	5 years
s.32	Demands accompanied by threats	(a) where a threat is to endanger the health, safety or physical well-being of a person -10 years; and (b) where a threat is to kill or inflict bodily harm - 20 years
s.33	Possession of an object with intent to kill	5 years
s.34	Forcible confinement	10 years
s.34A	Stalking	5 years
s.35	Torture	10 years

s.36	Abduction of young person	5 years
s.37	Kidnapping	20 years
s.38	Unlawfully taking a child	10 years
s.92A	Sexual assault in the first degree (i.e. inflicting grievous bodily harm with intent to have sexual intercourse)	(a) 17 years; and (b) where the accused acted in company with any other person - 20 years
s.92B	Sexual assault in the second degree (i.e inflicting actual bodily harm with intent to engage in sexual intercourse)	(a) 14 years; and (b) where the accused acted in company with any other person – 17 years
s.92C	Sexual assault in the third degree (i.e. unlawfully assaulting, or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse)	(a) 12 years; and (b) where the accused acted in company with any other person - 14 years
s.92D	Sexual intercourse without consent	(a) 12 years; and (b) where the accused acted in company with any other person - 14 years
s.92E	Sexual intercourse with a young person	(a) where the young person is under 10 years of age -17 years ; and (b) where the young person is under 16 years of age - 14 years
s.92EA	Maintaining a sexual relationship with a young person	(a) 7 years; and (b) where a person convicted of this offence was found to have committed another offence (against the person) in relation to the young person, (i) if the other offence is punishable by imprisonment for less than 14 years - 14 years; and (ii) if the other offence is punishable by imprisonment for 14 years or more - life imprisonment
s.92F	Act of indecency in the first degree (i.e. inflicting grievous bodily harm with intent to engage in an act of indecency)	15 years
s.92G	Act of indecency in the second degree (i.e. inflicting actual bodily harm with intent to engage in an act of indecency)	12 years
s.92H	Act of indecency in the third degree (i.e. unlawfully assaulting, or threatening to inflict grievous or actual bodily harm with intent to engage in an act of indecency)	10 years
s.92J	Act of indecency without consent	(a) 5 years; and (b) where the accused acted in company with any other person - 7 years

s.92K	Act of indecency with a young person	(a) where the young person is under 10 years of age 12 years; and (b) where the young person is under 16 years of age - 10 years
s.92M	Abduction for purposes of sexual intercourse	10 years
s.92W	Female genital mutilation	15 years
s.92X	Remove child from Territory for purposes of female genital Mutilation	7 years

New South Wales

Children (Care and Protection Act) 1987

s.20B	Carrying out special medical treatment in contravention of the Act	7 years
s.25	Abuse of a child	not exceeding 10 penalty units*
s.26	Child neglect	not exceeding 10 penalty units*
s.27	Unauthorised removal of a child	not exceeding 10 penalty units*
s.28	Tattooing of a child	not exceeding 10 penalty units*
s.29	Leaving children unsupervised in cars	not exceeding 10 penalty units*
s.51	Endangering children in employment	not exceeding 10 penalty units*

Crimes Act 1900

s.18	Murder	life
s.19A	Manslaughter	25 years
s.26	Conspiring to commit murder	25 years
s.27	Acts done to person with intent to murder	25 years
s.28	Acts done to property with intent to murder	25 years
s.29	Attempts to commit murder	25 years
s.33	Maliciously wounding	25 years
s.33A	Maliciously discharge a loaded weapon	14 years
s.35	Malicious wounding or inflicting grievous bodily harm	7 years
s.35A	Maliciously cause dog to inflict grievous bodily harm	7 years
s.35AA	Maliciously cause dog to inflict actual bodily harm	5 years
s.36	Causing grievous bodily disease	25 years
s.37	Attempts to choke, suffocate or strangle	25 years
s.38	Administer chloroform to commit an offence	25 years
s.39	Use poison so as to endanger life	10 years
s.40	Maliciously discharge loaded arms	14 years
s.55	Possessing or manufacturing an explosive substance with intent to injure the person	5 years
s.58	Assault with intent to commit a felony	5 years
s.59	Assault occasioning actual bodily harm	5 years

s.61	Common assault	2 years
s.61I	Sexual assault	14 years
s.61J	Aggravated indecent assault	20 years
s.61L	Indecent assault	5 years
s.61M	Aggravated indecent assault	7 years
s.61N(1)	Acts of indecency with a person under 16 years	2 years
s.61N(2)	Acts of indecency with a person above 16 years and under 18 years	18 months
s.61O	Aggravated acts of indecency	3 years
s.344A	Attempts to commit an act shall be liable to the penalty of that act	
s.345	Principals in the second degree in any felony shall be liable to the penalty of that felony	
s.346	Accessories before the fact shall be liable to same punishment as the principal felon	
s.347	Accessories after the fact shall be liable to the same punishment as the principal felon	

Guardianship Act 1987

s.35	Carrying out special treatment (on conviction on indictment) in contravention of the Act; or in the case of minor or major treatment (on summary conviction) in contravention of the Act.	7 years 1 year

Prisons (General) Regulation 1995&&

cl. 149	Use of more force than is reasonably necessary	not exceeding 10 penalty units*
cl. 171	Use prohibited punishments	not exceeding 10 penalty units*

Prisons(Administration) Regulation 1995

cl. 32	Use insulting or abusive language	not exceeding 10 penalty units*

*One penalty unit = $110

Northern Territory

Criminal Code

	Offering violence to officiating ministers of religion	2 years
	Sexual intercourse or gross indecency between males in public	14 years
	Sexual intercourse or gross indecency between males in private	14 years
	Sexual intercourse or gross indecency involving females under 16 years	14 years
	Sexual intercourse or gross indecency by provider of	7 years

	services to mentally ill or handicapped person	
	Attempts at procuration of young persons or mentally ill or handicapped person	5 years
	Unlawful sexual relationship with child	Life
	Indecent dealing with child under 16 years	10 years
	Gross indecency in public	2 years
	Dangerous acts or omissions	14 years
	Murder	Life
	Manslaughter	Life
	Attempt to murder	Life
	Threats to kill	7 years
	Disabling in order to commit a crime	Life
	Stupefying in order to commit a crime	Life
	Acts intended to cause grievous bodily harm or prevent apprehension	Life
	Grievous harm	14 years
	Attempting to injure by explosive substances	14 years
	Setting man-traps	3 years
	Bodily harm	2 years
	Female genital mutilation	14 years
	Common assault	5 years
	Assaults on police	16 years
	Assaults on the Administrator or judges or magistrates	14 years
	Assaults on member or crew of aircraft	14 years
	Sexual intercourse and gross indecency without consent	Life
	Coerced sexual self-manipulation	17 years
	Assaults with intent to commit an offence	3 years
	Kidnapping for ransom	20 years
	Kidnapping	7 years
	Deprivation of liberty	7 years
	Concealment of matters affecting liberty	3 years
	Wrongful custody of mentally ill person	2 years
	Threats	2 years
	Enticing away child under 16 years for immoral purposes	7 years
	Abduction of children under 16 years	14 years
	Robbery	Life
	Assaults with intent to steal	Life

Queensland

Criminal Code 1899

s.137	Delays to take person before magistrate	2 years
s.200	Refusal by public officer to perform duty	2 years
s.317	Acts intended to cause grievous bodily harm and other malicious acts	Life
s.320	Grievous bodily harm	14 years
s.320A	Torture	14 years
s.321	Attempting to injure by explosives or noxious substance	14 years
s.322	Maliciously administering poison with intent to harm	14 years
s.323	Wounding and similar acts	7 years
s.324	Failure to supply necessaries	3 years
s.328	Negligent acts causing harm	2 years
s.335	Common assault	3 years
s.336	Assault with intent to commit rape	14 years
s.339	Assault occasioning bodily harm in company while armed	10 years
s.340	Serious assault	7 years
s.346	Assault in interference with freedom of trade of work	5 years
s.347	Rape	Life
s.349	Attempt to commit rape	14 years
s.351	Abduction	7 years
s.354	Kidnapping	7 years
s.355	Deprivation of liberty	3 years
s.356	False certificates by officers charged with duties relating to liberty	3 years
s.357	Concealment of matters affecting liberty	3 years
s.358	Unlawful custody of patient under Mental Health Act	2 years
s.359	Threats	5 years
s.78	Interfering with political liberty	2 years

Children's Services Act 1965

s.69(1)	Ill treatment, neglect, abandonment of child likely to cause unnecessary suffering	1 year or 40 penalty units

Mental Health Act 1974

s.59	Ill treatment, neglect or molestation of mental patients/residents	6 months

*One penalty unit = $75

South Australia

Criminal Law Consolidation Act 1935

s.11	Murder	life
s.12	Conspiring or soliciting to commit murder	life
s.12a	Cause death by an intentional act of violence	life
s.19	Unlawful threats	5-12 years
s.19AA	Unlawful stalking	3-5 years
s.19A	Cause death and injury by reckless driving etc	4-15 years
s.21	Wounding etc with intent to do grievous bodily harm	life
s.23	Malicious wounding etc	5-8 years
s.25	Choking or stupefying to commit indictable offence	life
s.27	Maliciously administering poison etc with intent to injure, aggrieve or annoy any other person	3 years
s.29	Acts endangering life or creating risk of grievous bodily harm	5-15 years
s.30	Fail to provide food etc in certain circumstances	3 years
s.31	Possess object with intent to kill or cause grievous bodily injury	5-10 years
s.33A	Prohibition of female genital mutilation	7 years
s.33B	Removal of child from State for genital mutilation	7 years
s.39	Common assault	2-3 years
s.40	Assaults occasioning harm	5-8 years
s.47A	Threaten another person with a firearm	4 years
s.48	Rape	life
s.49	Unlawful sexual intercourse	life
s.56	Indecent assault	8-10 years
s.58	Acts of gross indecency	3-5 years
s.58A	Incite or procure commission by child of indecent act for prurient purposes	2-3 years
s.59	Abduction of male or female person	14 years
s.64	Procure sexual intercourse	7 years
s.74	Persistent sexual abuse of a child	life
s.80	Abduction of child under 16 years	7 years

Mental Health Act 1998

s.30	Neglect or ill treatment	2 years or $8,000 fine
s.31	Offences in relation to authorisations and orders	2 years or $8,000 fine

Guardianship and Administration Act 1993

s.61	Prescribed treatment not to be carried out without Board's consent	2 years or $8,000 fine
s.76	Ill treatment or neglect of a person with mental incapacity	2 years or $8,000 fine
s.77	Offences in relation to certain certificates and reports	2 years or $8,000 fine

Tasmania

Criminal Code 1924

s.115	Omission by public officer to perform duty	21 years
s.126	Unlawful sexual intercourse with insane persons or defectives	21 years
s.127	Indecent assault	21 years
s.127A	Aggravated sexual assault	21 years
s.144	Duty to provide necessaries	21 years
s.152	Omission of duty	21 years
s.158	Murder	21 years
s.159	Manslaughter	21 years
s.161	Accessory after the fact to murder	21 years
s.170	Committing an unlawful act intending to cause bodily harm	21 years
s.172	Wounding or causing grievous bodily harm	21 years
s.175	Causing injury by poison	21 years
s.176	Administering poison	21 years
s.177	Failing to supply necessaries	21 years
s.183	Aggravated assault	21 years
s.184	Assault	21 years
s.185	Rape	21 years

Alcohol and Drug Dependency Act 1968

s.63	Ill treatment or neglect of patients in treatment centres	12 months

Child Welfare Act 1960

s.47(1)	Ill treatment or neglect of a ward of State	12 months

Guardianship and Administration Act 1995

s.38	Carrying out medical treatment contrary to the Act on indictment	21 years
	Non-indictable	1 year

Mental Health Act 1963

S106(1)	Ill treatment or neglect of patients by staff	6 months
S106(3)	Ill treatment or neglect of mental illness patients by responsible persons	6 months
s.107	Improper use of restraint and seclusion of patients with mental illness	6 months

Mental Health Act 1996

s.87	Ill treatment or neglect of patients	2 years

Victoria

Crimes Act 1958

s.3	Punishment for murder	life or imprisonment for such other term as is fixed by the court.
s.3A	Unintentional killing in the course of furtherance of a crime of Violence	person liable to be convicted of murder. Penalties as above.
s.5	Punishment of manslaughter	20 years imprisonment or a fine in addition to or instead of a term of imprisonment
s.16	Causing serious injury intentionally	15 years
s.17	Causing serious injury recklessly	10 years
s.18	Causing injury intentionally or recklessly	5 years if the injury was caused intentionally; 2 years if the injury was caused recklessly
s.20	Threats to kill	2 years
s.21	Threats to inflict serious injury	1 year
s.21A	Stalking	10 years
s.22	Conduct endangering life	10 years
s.23	Conduct causing serious injury	5 years
s.24	Negligently causing serious injury	2 years
s.27	Extortion with threat to kill	5 years
s.31	Criminal assaults	1 year
s.38	Rape	25 years
s.39	Indecent assault	10 years
s.40	Assault with intent to rape	10 years

s.321	Conspiracy to commit an offence against a law or laws of Victoria	• penalty for the relevant offence fixed by law; • if penalty for relevant offences is imprisonment where maximum length of term is not prescribed by law, then 10 years; • if the relevant offence is murder, the person is liable to life imprisonment or imprisonment for a term fixed by the court.
s.321G	Incitement	• penalty for the relevant offence fixed by law; • if penalty for relevant offence/s is imprisonment where maximum length of term is not prescribed by law, then 2 years; • if the relevant offence is murder, the person is liable to life imprisonment or imprisonment for a term fixed by the court.
s.323	Abettors in indictable offences	a person who aids, abets, counsels or procures the commission of an indictable offence can be punished as a principal offender.
s.325	Accessories – a person who does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of a principal offender is guilty of an indictable offence	• if the principal offence is one for which the maximum penalty is life imprisonment, then a maximum penalty of 25 years; • in any other case, to imprisonment for a term which is neither - (i) more than 60 months in length; nor (ii) more than one-half the length of the longest term which may be imposed on first conviction for the principal offence.
Common law	Common assault	5 years
Common law	False imprisonment	10 years
Common law	Kidnapping	25 years

Summary Offences Act 1966

s.23	Common assault	$1500 fine or imprisonment for three months
s.24	Aggravated assault	$2500 fine or six months imprisonment

Mental Health Act 1986

Part 5	Proscribed conduct in relation to mentally ill persons, unless the procedure is carried out in accordance with legislation or with the consent of the person: • psychosurgery • electroconvulsive therapy • mechanical restraint, seclusion, and non-psychiatric medical treatment	$2,000 fine. A community based order may also be imposed.

Intellectually Disabled Persons' Services Act 1986

Div 3 of Part 5	Proscribed actions in relation to intellectually disabled persons unless the procedure is carried out in accordance with legislation • mechanical or chemical bodily restraint; • seclusion; • aversive therapy.	$2,000 fine. A community based order may also be imposed.

Alcoholics and Drug Dependent Persons Act 1968

s.23	To strike, wound, ill treat or wilfully neglect any person detained in an alcohol and drug assessment or treatment centre.	3 years

Children and Young Persons Act 1989

s.261	It is an offence for any person who has a duty of care in relation to a child to take action that results in the child suffering significant harm from physical injury or sexual abuse, significant emotional or psychological harm, or which is likely to result in the child's Physical development or health being significantly harmed. It is also an offence to intentionally fail to take action that results in the child's physical development or health being harmed.	$5,000 or imprisonment for up to 12 months. The full range of Sentencing options under the *Sentencing Act 1991*(eg. intensive correction orders; community based orders) are also available.

Western Australia

Criminal Code

s.294	Intentionally causing grievous bodily harm or prevent arrest	20 years
s.295	Preventing escape from wreck	20 years
s.297	Grievous bodily harm	7 years
s.298	Causing explosion likely to endanger life	20 years
s.299	Attempting to cause explosion likely to endanger life	14 years
s.300	Maliciously administering poison with intent to harm	14 years

s.301	Wounding and similar acts	5 years
s.302	Failure to supply necessities of life	3 years
s.303	Endangering life or health of apprentices or servants	3 years
s.304	Endangering life of children by exposure	3 years
s.305	Setting mantraps	3 years
s.313	Common assault	18 months
s.317	Assaults occasioning bodily harm	5 years
s.317A	Assaults with intent	5 years
s.318	Serious assaults	10 years
s.320	Sexual offences against child under 13	20 years
s.321	Sexual offences against child or over 13 and under 16	20 years
s.322	Sexual offences by person in authority against child of or over 16	10 years
s.322a	Sexual offences against juvenile male	5 years
s.323	Indecent assault	5 years
s.324	Aggravated indecent assault	7 years
s.325	Sexual penetration without consent	20 years
s.326	Aggravated sexual penetration without consent	20 years
s.327	Sexual coercion	14 years
s.328	Aggravated sexual coercion	20 years
s.330	Sexual offences against incapable person	20 years
s.332	Kidnapping	20 years
s.333	Deprivation of liberty	10 years
s.336	Procuring the apprehension or detention of a person not suffering from a mental disorder	3 years
s.337	Unlawful custody of persons suffering from mental disorder	2 years
s.338A	Threats with intent to influence	10 years
s.338B	Threats	7 years
s.338D	Unlawful stalking	8 years
s.554	Attempt to commit indictable offence	14 years
s.554	Incitement to commit indictable offence	14 years
s.555	Summary trial of attempt or incitement	Half statutory penalty on indictment; or summary conviction penalty which ever is lesser
s.555A	Attempts and incitement (simple offences)	Statutory penalty
s.556	Attempt to procure commission of criminal act	Statutory penalty
s.558	Conspiracy to commit indictable offence	14 years
s.560	Summary trial of conspiracy to commit indictable offence	Statutory penalty
s.562	Accessory after the fact (indictable offence)	14 years
s.563	Summary trial of accessory after the fact	(see s.555)

Child Welfare Act

s.31A	Punishment for misconduct or neglect causing a child to be in need of cure and protection	1 year

Disability Services Act 1993

s.53	Offence of ill-treatment	1 year or $4,000

Mental Health Act 1996 (from 13.11.97)

s.162	Offence for ill-treatment	1 year or $4,000

APPENDIX THREE

ADMINISTRATIVE REVIEW OF PUBLIC OFFICER CONDUCT

APPENDIX 3.1 POLICE OFFICERS

Federal	• Ombudsman • Merit Protection Review Agency
Australian Capital Territory	• Ombudsman • Discrimination Commissioner
New South Wales	• Ombudsman • Police Integrity Commission • Independent Commission Against Corruption • Police Service Internal Affairs Branch
Northern Territory	• Ombudsman • Anti-Discrimination Commission • Police Professional Responsibility Unit
Queensland	• Criminal Justice Commission • Misconduct Tribunals
South Australia	• Police Complaints Authority • Police Disciplinary Tribunal • Internal Investigations Branch • Anti-Corruption Branch
Tasmania	• Internal Investigation Unit • Ombudsman
Victoria	• Ethical Standards Department, Victoria Police • Deputy Ombudsman (Police Complaints)
Western Australia	• Internal Investigations Unit • Ombudsman • Anti-Corruption Commission

APPENDIX 3.2 PRISON OFFICERS

Australian Capital Territory	• Internal investigations • Official Prison Visitors • Ombudsman • Discrimination Commissioner
New South Wales	• Inspector-General of Corrective Services • Professional Standards Unit, Department of Corrective Services • Ombudsman
Northern Territory	• Ombudsman • Anti-Discrimination Commission • Official Prison Visitors
Queensland	• Misconduct Tribunals • Parliamentary Commissioner for Administrative Investigations • Criminal Justice Commission
South Australia	• Senior Investigation Officer, Department of Correctional Services • Visiting Tribunal • Ombudsman
Tasmania	• Head of Agency • Ombudsman
Victoria	• Ombudsman • Official Prison Visitors
Western Australia	• Ombudsman • Anti-Corruption Commission • Ministry of Justice Investigations Unit • Prison Visitors • Aboriginal Prison Visitors • Juvenile Detention Centre Visitors

APPENDIX 3.3 MILITARY PERSONNEL

Federal	• *Defence Act 1903* • General Courts of Inquiry • Boards of Inquiry • Internal Investigating Officers • *Defence Force Discipline Act 1982* • Disciplinary Tribunals

APPENDIX 3.4 IMMIGRATION OFFICERS

Federal	• Internal Investigation Section, Department of Immigration & Multicultural Affairs • Human Rights and Equal Opportunity Commission • Ombudsman • Federal Court of Australia

APPENDIX 3.5 CUSTOMS OFFICERS

Federal	• *Public Service Act 1922* • Internal investigations by the Australian Customs Service • Human Rights and Equal Opportunity Commission • Ombudsman • Federal Court of Australia

APPENDIX 3.6 PUBLIC MEDICAL OFFICERS

Australian Capital Territory	• Director of Mental Health • Community Visitor of Public Hospitals • Ombudsman • Community Advocate • Medical Practitioners Board • Administrative Appeals Tribunal • Public Sector Disciplinary Committee • Discrimination Commissioner
New South Wales	• Health Care Complaints Commission • Mental Health Review Tribunal
Northern Territory	• Ombudsman • Patient Advocate, Royal Darwin Hospital • Anti-Discrimination Commission
Queensland	• Ombudsman • Medical Assessment Tribunal • Health Rights Commission • Anti-Discrimination Commission
South Australia	• Public Advocate • Health Commission • Medical Practitioners Board • Medical Practitioners Tribunal • Mental Health Review Tribunal
Tasmania	• Ombudsman • Health Complaints Commissioner • Mental Health Review Tribunal • Head of Agency • Public Guardian
Victoria	• Mental Health Review Board • Community Visitor • Ombudsman • Health Services Commissioner • Chief Psychiatrist • Intellectual Disability Review Panel
Western Australia	• Medical Board • Office of Health Review • Department of Health Complaints and Information Unit • Boards of Visitors • Parliamentary Commissioner for Administrative Investigations (Ombudsman) • (Mental Health) Council of Official Visitors • Mental Health Review Board

APPENDIX 3.7 RESIDENTIAL CARERS

Australian Capital Territory	• Internal investigations by Department • Public Sector Management Inquiry • Ombudsman • Discrimination Commissioner
New South Wales	• Community Services Commission • Department of Community Services Customer Complaints System • Guardianship Board • Community Services Appeals Tribunal • Health Care Complaints Commission • Mental Health Review Tribunal • Ombudsman • Independent Commission Against Corruption
Northern Territory	• Ombudsman
Queensland	• Criminal Justice Commission • Misconduct Tribunals • Parliamentary Commissioner for Administrative Investigations • Health Rights Commission • Children's Commissioner
South Australia	• Manager, Secure Care Centre • Director, Young Offenders Unit • Police Complaints Authority • Commissioner of Police • Guardianship Board • Ombudsman • Medical Board • Medical Practitioners Professional Conduct Tribunal
Tasmania	• Head of Agency • Ombudsman
Victoria	• Police • Department of Human Services • Ombudsman
Western Australia	• Internal responses to complaints - - Consumer Advocate assists complaints - Case Review Board (child wards) - Minister for Family and Children's Services • Commissioner for Equal Opportunity • Guardianship and Administration Board • Public Advocate • Ombudsman

APPENDIX 3.8 PUBLIC SCHOOL TEACHERS

Australian Capital Territory	• Internal investigations by Department of Education and Children's & Family Services Bureau • Public Sector Management Inquiry • Discrimination Commissioner
New South Wales	• Chief Executive Officer, Department of Education • Anti-Discrimination Board • Ombudsman
Northern Territory	• Ombudsman
Queensland	• Criminal Justice Commission • Misconduct Tribunals
South Australia	• Director-General, Department of Education • District Superintendent of Schools • School Area Equal Opportunity Officer • Commissioner for Equal Opportunity • Ombudsman
Tasmania	• Head of Agency • Ombudsman
Victoria	• Director of School Education • Merit Protection Board
Western Australia	• Internal responses to complaints - - School principal - District Superintendent - Director General • Ombudsman

TABLE 1. – RELEVANT CRIMINAL LEGISLATION

Federal	**ACT**	**New South Wales**
Crimes Act 1901 *Crimes (Aviation) Act 1991* *Crimes at Sea Act 1979* *Crimes (Torture) Act 1988* *Customs Act 1901* *Defence Act 1903* *Defence Force Discipline Act 1982* *Disability Discrimination Act 1992* *Extradition Act 1988* *Family Law Act 1975* *Geneva Conventions Act 1957* *Human Rights and Equal Opportunity Act 1986* *Public Service Act 1922* *Racial Discrimination Act 1975* (incorporating Part IIA dealing with racially offensive behaviour) *Sex Discrimination Act 1984* *War Crimes Act 1945*	*Children's Services Act 1986* *Crimes Act 1900* *Discrimination Act 1991*	*Anti-Discrimination Act 1977* *Children (Care and Protection) Act 1987* *Children (Detention Centres) Act 1987* *Correctional Centres Act 1952* *Crimes Act 1900* *Crimes (Child Sexual Tourism) Amendment Act 1994* *Education Act 1990* *Education Reform Amendment (School Discipline) Act 1995* *Guardianship Act 1987* *Independent Commission Against Corruption Act 1988* *Ombudsman Act 1974* *Police Integrity Commission Act 1996* *Police Service Act 1990* *Protected Disclosures Act 1994* *Public Sector Management Act 1988*
Northern Territory	**Queensland**	**South Australia**
Anti-Discrimination Act 1992 *Criminal Code* *Education Act 1979* *Mental Health Act 1979* *Police Administration Act 1979* *Prison (Correctional Services) Act 1980*	*Anti-Discrimination Act 1991* *Children's Services Act 1965* *Criminal Code Act 1899* *Mental Health Act 1974*	*Consent to Medical Treatment and Dental Procedures Act 1985* *Consent to Treatment and Palliative Care Act 1994* *Corporal Punishment Abolition Act 1971* *Correctional Services Act 1982* *Criminal Law Consolidation Act 1935* *Education Act Regulations* *Equal Opportunity Act 1984* *Guardianship and Administration Act 1993* *Medical Practitioners Act 1983* *Mental Health Act 1993* *Police Act 1952* *Police Act Regulations* *Police General Orders, General Order 2100* *Public and Environmental Health Act 1987* *Public Sector Management Act 1995* *Sexual Reassignment Act 1988* *Summary Offences Act 1953* *Young Offenders Act 1993*

Tasmania	Victoria	Western Australia
Alcohol and Drug Dependency Act 1968 *Child Welfare Act 1960* *Criminal Code Act 1924* *Guardianship and Administration Act 1995* *HIV/AIDS Preventive Measures Act 1993* *Mental Health Act 1963* *Police Regulation Act 1898* *Prison Act 1977* *Sex Discrimination Act 1994*	*Alcoholics and Drug Dependent Persons Act 1968* *Children and Young Persons Act 1989* *Corrections Regulations 1988* *Crimes Act 1958* *Crimes (Offences at Sea) Act 1978* *Education Regulations 1988* *Equal Opportunity Act 1995* *Intellectually Disabled Persons'Services Act 1986* *Mental Health Act 1986* *Summary Offences Act 1966*	*Criminal Code Act 1913* *Crimes (Offences at Sea) Act 1979* *Child Welfare Act 1947* *Equal Opportunity Act 1984* *Education Act 1928* *Disability Services Act 1993* *Guardianship and Administration Act 1990* *Health Services (Conciliation and Review) Act 1995* *Mental Health Act 1996* *Police Act 1892* *Prisons Act 1981* *Public Sector Management Act 1994* *Young Offenders Act 1994*

TABLE 2. – OMBUDSMAN LEGISLATION

Federal
Ombudsman Act 1976 (Cth)

Australian Capital Territory
Ombudsman Act 1989 (ACT)

New South Wales
Ombudsman Act 1974 (NSW) - (The Ombudsman also has jurisdiction pursuant to the *Freedom of Information Act 1989 (NSW), Police Service Act 1990 (NSW)* and the *Protected Disclosures Act 1994 (NSW)*.)

Northern Territory
Ombudsman (Northern Territory) Act 1977 (NT)

Queensland
Parliamentary Commissioner Act 1974 (Qld)

South Australia
Ombudsman Act 1972 (SA)

Tasmania
Ombudsman Act 1978 (Tas)

Victoria
Ombudsman Act 1973 (Vic)

Western Australia
Ombudsman Act 1971 (WA)

TABLE 3. – STATUTORY COMPENSATION SCHEMES

Australian Capital Territory
Criminal Injuries Compensation Act 1983 (ACT)

New South Wales
Victims Compensation Act 1987 (NSW)
Victims Compensation Act 1996 (NSW)

Northern Territory
Crimes (Victims Assistance) Act 1982 (NT)
Crimes Compensation Act 1992 (NT)

Queensland
Criminal Offence Victims Act 1995 (Qld)

South Australia
Criminal Injuries Compensation Act 1978 (SA)

Tasmania
Criminal Injuries Compensation Act 1976 (Tas)

Victoria
Criminal Injuries Compensation Act 1983 (Vic)
Victims of Crime Assistance Act 1996 (Vic)

Western Australia
Criminal Injuries Compensation Act 1982 (WA)
Criminal Injuries Compensation Act 1985 (WA)
Criminal Injuries Compensation Regulations 1985 (WA)
Sentencing Act 1995 (WA)
Young Offenders Act 1994 (WA)

TABLE 4. – BILATERAL EXTRADITION TREATIES WITH STATES PARTIES TO THE CONVENTION

Australia has an extradition treaty or arrangement in force with the following State parties to the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Argentina	France	Italy	Philippines
Austria	Germany	Iceland[+]	Portugal
Belgium	Greece	Korea, Republic of	Spain
Brazil	Hong Kong SAR[#]	Luxembourg	Sweden
Chile	Hungary	Mexico	Switzerland
Denmark[+]		Monaco	USA
Ecuador		Netherlands	Venezuela
Finland	Israel	Norway	

[+] Australia has non treaty status extradition arrangements with these States.

[#] As a State Party to the CAT, China extended the application of the CAT to the Hong Kong SAR from 1 July 1997. Australia entered into an extradition agreement with the Government of Hong Kong on 29 June 1997. China recognizes this agreement as continuing in force with the Hong Kong SAR.

Note that Australia continues to negotiate extradition treaties with other States. For example, Australia has signed extradition treaties with Paraguay, Poland, Turkey and Uruguay. These treaties are expected to enter into force in the near future.

In addition, Australia has extradition arrangements with the following Commonwealth countries and State parties to the CAT via the London Scheme. The London Scheme is a set of principles agreed to by Commonwealth Law Ministers and upon which the extradition laws of Commonwealth countries are modelled and then applied to each other on the basis of reciprocity.

Antigua & Barbuda	Kenya	New Zealand
Austria	Malawi	
Canada	Malta	Sri Lanka
Cyprus	Mauritius	Uganda
Guyana	Namibia	United Kingdom

Note that sub-paragraph 22(3)(b) of the federal *Extradition Act 1988* prohibits the surrender of a person who has been found to be eligible for extradition by a domestic court unless the federal Attorney-General is satisfied that, upon surrender, the person will not be subjected to torture.

LIST OF ANNEXES *

Annex 1 *Asylum, Border Control and Detention,* Federal Parliamentary Inquiry by the Joint Standing Committee on Migration, February 1994

Annex 2 *Human Rights and Mental Illness Report of the National Inquiry into the Human Rights of People with Mental Illness*, HREOC, September 1993

Annex 3 *Royal Commission into Aboriginal Deaths in Custody. National Report*, Commissioner Elliott Johnston, Canberra, 1991

Annex 4 *Royal Commission into the New South Wales Police Service Final Report* , Commissioner The Hon. Justice JRT Wood, May 1997

Annex 5 *Integrity: But Not By Trust Alone, Inquiry into Australian Federal Police and National Crime Authority Complaints and Disciplinary Systems,* Report No. 82 ALRC 1996

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* These annexes may be consulted in the files of the Office of the United Nations High Commissioner for Human Rights.